IN THE LEARNED COURT OF THE DISTRICT JUDGE,
COMILLA.

(APPELLATE JURISDICTION)

AGAINST DECREE.

TITLE APPEAL NO. 23 /2017

Original Suit No. 2/2004 in the Ld. Court of 2nd Joint District Judge, Comilla.

1. Md. Nurul Islam,

2.Nur Muhammed.

3.Shamsul Hoque

4.Abul Khair

all sons of late Mvi. Muhammed Ali Hossain of Vill. Mandari.

5. Torab Ali (dead).

5(ka) Wife- Rezia Begum wife of L. Torab Ali.

5(kha) son- Ibrahim Khalil

5(ga). ,, Muhammed Ali

5(gha) daughter- Shamima Akhter

5(oma) ,, Rokeya Akter

Sons & daughters of L. Torab Ali Vill- Raipur,

P.S. Laksam Dist. Comila.

6.Monohar Ali (dead).

6(ka). Sabane Bibi W/O late Monohar Ali.

6(kha). Momtazuddin

6(ga).Abdul Maleque

Sons of late Monohar Ali.

6(gha) Monoara Begum.

6(oma) Morioum Begum

Daughters of late Monohar Ali Vill-Raipur P.O. Hazotkhala.

7.Suraj Mia (dead).

7(ka) Abul Kalam.

7(kha). Abul Hasem.

7(ga). Nurun Nahar.

7(gha) Rabiya Begum.

7(oma). Nasima Begum.

7(cha). Sapali Akter.

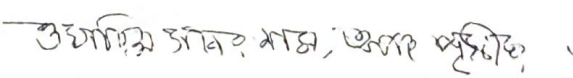
Sons & daughters of late Suraj Mia Vill. Raipur P.O. Hazotkhola.

8.Sufia Khatoon W/O Suraj Mia Vill- Rahipur.

9.Mobarak Hossain.

10.Mafizul Hoque.

11.Nazer Ahmed

Sons of Zainal Abedin Vill. W. Zaikamta.

12.Ambia Khatoon being dead her heirs:-

12(ka). Jashimuddin.

12(kha). Bashirullah

12(ga) . Abul Kalam

All Sons /O L. Ibrahim Khalil

Vill. Shikarpur P.S. Sadar Dakhin.

12(gha) . Nasima Akhter W/O Abdul Latif.

Vill. Kashum Bari P.S. Sadar Dakhin

12(oma). Rokeya Begum W/O Md. Maruf

Vill. Chotta Bhatua P.S. Barura Dist. Comilla.

13.Abdul Malak

14.Abdul Khaleque

Sons of L. Abdul Samad vill. Jaikamta.

15.Nurul Amin

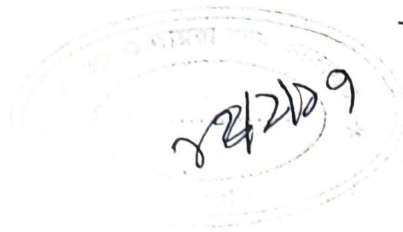
16. Muhammed Ali

Sons of Abdul Samad Vill-South Jaikamta

P.S. Laksam District-Comilla.-----------Plaintiff- Appellants.

-Versus-

1. Ali Hossain

2. Ahmed Hossain.

3. Joynal Abedin all Ss/O L. Eaqub Ali, Vill- S. Jaikamta

4(ka) /4(ga) being dead her heir-

4(kha) Son- Abdul Malek

4(gha) Daughter- Nasima Akhter

W/O Nasir Ahmed Vill- Jagatpur

P.S. Kotwali, District-Comilla.

5. Ayesha Khatoon W/O L. Mir Hossain Vill-Mandari

Upzilla- Laksam, Dist. Comilla.-Principal Defdt. Respondents.

6. Osman Ali S/O L. Nasaruddi Vill. Raipur.

7. Serajul Hoque (dead):-

7(ka). Hazera Begum W/O late Sirajul Hoque.

7(kha).Anowar Hossain.

7(ga) Adul Bari.

7(gha) Jaheda Begum.

7(oma). Zano Begum.

Sons & daughters of late Sirajul Hoque,

Vill-Hazotiya, P.S. Sadar Dhakhin Comilla.

8. Amir Hossain being dead his heirs Respondnt Nos. 10-15.

9. Name deleted vide order No. 22 dt. 1.4.92.

10. Abida Khatoon being dead her heirs:-

P.S. Laksam Dist. Comilla.

22.Chand Mia S/O L. Abdul Aziz Vill-Lakhipura.

23. Rabeya Khatoon W/O L. Abdul Aziz Vill. Mandari.

Defendant No. 24 being dead his heirs:-

24(ka) Habibullah,

24(kha) Abdul Mannan

24(ga) Nayantara

24(gha) Jaheda Begum

24(oma) Lazatarnessa

24(cha) Momena Khatoon

Ss/O & Ds/O late Ali Mia Vill. S. Jaikamta.

25.Md. Habib Ullah S/O L. Ali Mia

26.Abdul Mannan S/O L. Ali Mia Vill. Jaikamta

27. Nayantara W/O L. Kala Mia

Vill. Shaktaala P.S. Laksam District-Comilla.

28.Jaida Khatoon W/O Abdul Samad

Vill. Shktala P.S. Laksam District-Comilla.

29.Nazaternessa W/O Abdul Hamid @ Muni Mia

Vill. Kalikapur P.S. Barura District-Comilla.

30.Momena Khatoon W/O Mustafizur Rahman

Vill. Noapara P.S. Barura, District-Comilla.

31(ka). Shamsul Hoque,

31(kha). Salimulla,

31(ga) Kalimulla

31(gha) Rahela Begum

sons & daughter of L. Ashadulla Vill-Jaikamta.

31(oma) Feroza Begum W/O Ali Akbor Vill. Jaikamta.

32/33-Names & addresses deleted by order dt. 8/6/98.

34. Lal Mati Bibi W/O L. Abdul Kader, Vill-Jaikamta.

35. Abu Zahar

36. Masuma Khatoon.

37. Saleha Begum

Sons and daughter of Abdul Kader

38. Rahima Khatoon W/O L. Abdul Mannan

Vill-Haldia P.S Laksam Dist. Comilla.

39. Rahaternessa W/O Abul Hashem

Vill. Ramchandrapur P.S. Chauddagram Dist. Comilla.

40. Shamsun Nahar W/O Abdur Rob

Vill. Maskipur P.S. Barura Dist. Comilla.

41. Abdul Latif S/O L. Haji Abu Taleb Vill- S. Jaikamta.

42(ka) Faiz Ahamed S/O L. Anu Mia

42(kha). Rahima Begum W/O Ibrahim.

42(ga) Hafiza Khatoon W/O L. Anu Mia

Vill-S. Jaikamt P.S. Kotwali District-Comilla.

43. Hafiza Khatoon W/O Abbas Ali

44. Abu Taher.

45. Abdul Hoque Sons of Shamsul Hoque.

46. Shamsul Hoque S/O L. Salimuddin Vill. Raipur.

47. Nurernessa W/O Mafizur Rahman

Vill. Raipur P.S. Laksam Dist. Comilla.

48. Amena Khatoon W/O Julfu Mia Vill. Laxmipur

49. Anwar Hossain

50. Jaheda Khatoon

Son & daughter of Serajul Islam Vill. S. Hazatia.

51. Fazlur Rahman S/O Ana Mia.

52. Halima Khatoon W/O Fazlur Rahman.

53. Md. Kamal Hossain S/O Serajul Islam

Vill. S. Hazatia P.S. Laksam Dist. Comilla.

54. Shahid Uddin Ahmed S/O L. Jahir Uddin Ahmed

Vill. Mandari P.S. Laksam District - Comilla.

--- Proforma defendant Respondents.

Appeal Valued at Tk. 94,600/= Suit valued at Tk. 94,600/=

Being aggrieved by and dissatisfied with the Judgment delivered on 06/11/16 & Decree signed on 13/11/16 by Mrs. Shyla Sharmin, Ld. Joint District Judge, 2nd Court , Comilla in dismissing T.S. No. 02/2004 on contest against defendant Nos. 1/5/51/52/54 & exparte against the rest . The above named plff Appellants beg to prefer this Appeal on the following amongst other.

GROUNDS.

I. For that in view of the facts, circumstances and evidence on record, the Ld. Joint District Judge 2nd Court, Comilla ought to have decreed T.S. No. 2 of 2004 in favour of the plaintiff against the contesting Defendants and exparte

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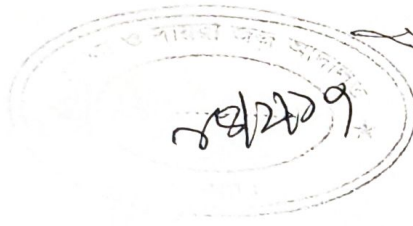
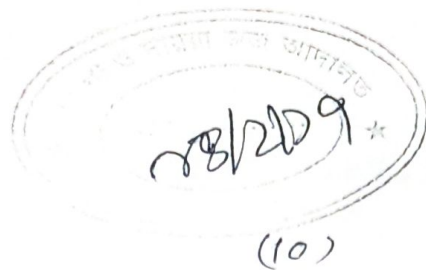

against the rest and in dismissing the instant Suit the Ld. Court below committed error of law and facts leading to an error in his decision occasioning failure of justice and as such the impugned Judgment & Decree is not sustainable in law & liable to be set aside.

II. For that the Ld. Joint District Judge has failed to decide the suit in to true perspective rather basing his decision on surmises and conjecture erroneously dismissed the Suit causing total failure of justice.

III. For that the Ld. Joint District Judge misread the documentary evidence on record and also misread oral testimony of the P.Ws & D.Ws on record & committed gross illegality in dismissing the suit leading to failure of justice and a such the impugned Judgment Decree is liable to be set aside.

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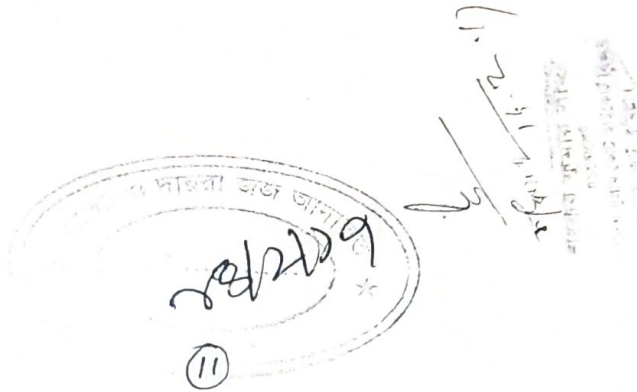
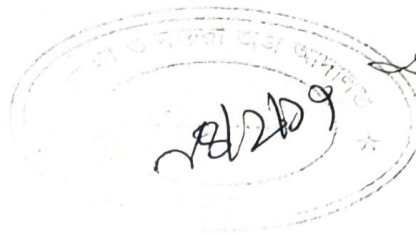
IV. For that in view of the facts that C/S Khatian No. 7/1122 48 marked Ext. 1(Ka)/Kha was recorded in the name of Amir Uddin & those Khatians were finally published in the year 1917 and the Plaintiff claimed that Tunu Gazi S/O Amir Uddin was the owner and after his death the property was devolved in Amiruddin and Esha Bibi & then mistakenly the name of Esha Bibi was not recorded in those Khatians and thereafter Esha Bibi died leaving two sons in Nasaruddin and Basaruddin but the contesting defendant did not file a scrape of paper to show the acquision of property by Amiruddin and also did not mention the source of acquision by him alone and presumption of the record of right is always rebuttable and the Ld. Court below has totally ignore the established rule of law and delivered a wrong judgment unwarranted in law.

V. For that having regard to the fact that the rent of the suit jote was fell in Arrear & the property was vested in the Ex-land lord through Britte-nama No. 1850 dated 18.7.1911 marked Ext. 9 & the admitting the vesting of the property with Zaminder Aminuddin & Nasaruddin, Basar Uddin executed kabuliyat dated 27.3.13 marked Ext. 3/3(Ka) in favour of Hossain Haider Chowdhury & this kabuliyat is a registered document remain unchallenged & the Defendant as yet did not challenge the validity of the document in any Court of law and Amiruddin who was the recorded Tenant admitting ~~talling~~ taking new settlement through Kabuliyat rebutted the presumption of the C.S. Record & the Defendant with out cancellation of the kabuliyat and also claiming through Amiruddin cannot put their leg on the C/S Record & the Ld. Joint District Judge 2nd Court, Comilla misconceived

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the law and facts causing total failure of Justice called for interference in appeal.

VI. For that the Ld. Joint District Judge in one corner has wrongly decided that the plaintiffs have title to the extent of ~~1 to 1 aware~~ 1.61 acres though the plaintiffs have successfully proved their title to the extent 5.12 & it is proved that the plffs. though co-shares of the suit jote were necessary party in Partition Suit No. $\frac{78/81}{251/84}$ but the Defendant Respondent being the plaintiffs in the aforesaid Partition Suit in as much as the present Plaintiffs tried their best to be a party in the said Partition Suit but failed and in such a position the Decree in Partition Suit No. $\frac{78/81}{251/84}$ is ineffective & not binding on the present Plaintiff being not a party & as such the trial Court ought to have connec~~ted~~ (called) the Decree in Partition Suit No. $\frac{78/81}{251/84}$ & the contrary

(13)

finding & decision of the Ld. Court below is totally based on misconception of law & as such the impugned Judgment & decree is not sustainable in Law.

VII. For that the Ld. Joint District Judge in one corner of his Judgment has found and decide that the Decree in T.S. No. $\frac{78/81}{251/84}$ was obtained fraudulently basing on non-existence document and as such by the alleged decree the title of the plaintiff has been affected & the plaintiff in T.S . No. $\frac{78/81}{251/84}$ as not obtained any title either on the basis of non existence deed nos. through Nadabi deed being No. 8056/5042 dated 17.2.83 which was obtained during pendency of the T. Suit in as much as the Defendant filed suit for permanent injunction being No. $\frac{305/81}{516/83}$ in the Court of Assistant Judge Laksam against the present plaintiffs with ulterior Motive & in that suit the original

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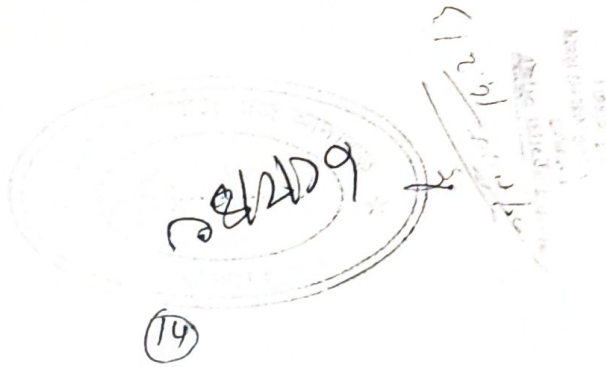
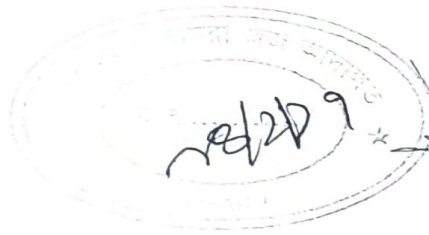

Deeds were filed & obtained Temporary injunction &
behind the back the deeds were taken back of the suit
thereafter was with drawn & in this was original deeds
relied upon by Defendant were filed in both the suits but
those original deeds were withdrawn from he Courts and
during the pendency of those Suits they have created
fraudulent Nadabinama on 17.2.83 & the Ld. Joint District
Judge has in spite of punishing the persons created false &
fabricated & not existence deed has encouraged this
persons for which the impugned Judgment & deed suffers
from gross illegality leading to an error in his Judgment
causing failure of justice.

VIII. For that the Ld. Joint District Judge has already found that
the Decree in T.S. No. $\frac{78/81}{251/84}$ was obtained fraudulently on
the basis of non existence of sale deed and the Ld. Court
below through execution case already gave delivery of

possession to the Decree holder & now it is the Ld. Court concern to restore possession to it original ~~possession~~ position for ends of justice U/S 144 of the C.P.C. but the Ld. Joint District Judge has miserably failed to give any direction to the Decree holder or any decision in this respect in his judgment giving a chance to the Decree holder to retain possession on the basis of fraudulent Decree causing failure of justice and as such the impugned Judgment is not sustainable in law.

IX. For that the plaintiff Appellant who were not contesting Defendant in T.S. No. $\frac{78/81}{251/84}$ in as much as the appellants were not made parties and for which they were not bound by the fraudulent Decree but by the fraudulent Decree & through execution case the appellants were evicted from their claimed land and thereby the appellants were forced to pray for declaration of title & recovery of Khash

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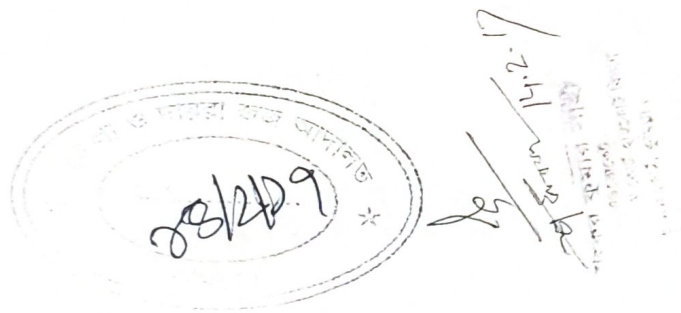
possession & the instant suit is quite maintainable in law & the contrary findings & decision of the Ld. Court below is bad in law & as such the impugned judgment is liable to be set aside.

X. For that the Ld. Joint District Judge ought to have found and considered that the appellant s as per Ld. Courts observation purchased a greater portion of this claimed land from the common vender & the appellants filed registered documents to prove their contention but the decree holder did not & in such a position the Ld. Court below misconceived the law & delivered a confusing decision causing failure of justice.

XI. For that the Ld. Joint District Judge misread and misconstrued the documentary evidence on record & erroneously found the plaintiff appellant was able to prove title to the extent of 1.61 acres of land & not 5.12 s

claimed & this finding and observation of the Ld. Court below is against the documents filed by the plaintiff and as such the impugned Judgment suffers from illegality leading to erroneous judgment which is liable to be set aside.

XII. For that the plff. appellant has prayed for cancellation of Judgment & Decree of Partition Suit No. $\frac{78/81}{251/84}$ & whose the Ld. Joint District Judge has found decided that the plaintiff - appellant was a necessary party in the aforesaid Suit & the Decree in Partition Suit No. $\frac{78/81}{251/84}$ was obtained fraudulently on the basis of non existence of documents and then as per law the Ld. court below ought to have passed at least a decree of cancellation of the alleged decree so obtained fraudulently & the contrary decision of the L. Court below is bad in law and liable to be set side.

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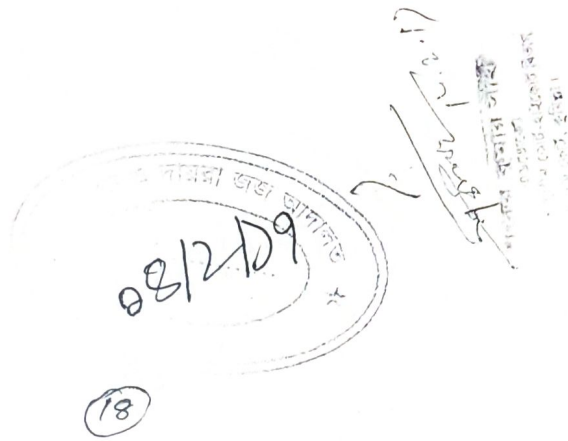
XIII. For that the plaintiff of T.S. No. $\frac{78/81}{251/84}$ got the fraudulent decree on the basis of non existence deed No. 8056/5042 & the Ld. Court below found in his Judgment that those deeds are void abinitio & the plffs of that suit has created another Nadabinama deed dt. 17.2.198 & the recital of the Nadabinama deed ges to show the existence of suit document No. 8056/5042 & the plaintiff appellant prayed for declaration of decree that those deeds are void ab-initio & non existence but the Ld. Joint District Judge has wrongly decided that the non existence deed need not be declared and if it is so as it may then the Defdt. Respondent had the opportunity to go back to the Nadabi nama deed which is against the principles of law and natural Justice.

XIV. For that the Ld. Joint District Judge has totally failed to have come to a decision that the Defdts who has com with

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an alternative defence case has miserably failed to prove their case and as such the Ld. Court below ought to have decided that the plaintiff case is proved & passed the decree accordingly & the contrary finding & decision of the Ld. Court below is unwarranted in law.

XV. For that the rest of the grounds shall be verbally urged through the engaged Lawyer at the time of hearing.

Certificate.

Certified that I have gone through the papers supplied to me and I am in opinion that there are good grounds for Appeal. I undertake to conduct the same into the Appellate Court, Comilla.

Dated 14. 2 ~~January~~, 2017.

Sankar Kumar Saha
14.2.17

Bangladesh Form No.3701

হাইকোর্ট বিভাগ ফরম নং (জে)২

HIGH COURT FORM NO.(J)2

মুল মোকদ্দমা/মামলার রায়ের শিরোনামা

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Comilla.

In the court of 2nd joint District Judge, Comilla.

উপস্থিতঃ-

Present: Ms. Shyla Sharmin, Joint District Judge.

Sd. Illegible
6.11.16

সালের মাসের দিবসের বার

The 6th November, 2016.

সালের মোকদ্দমা/মামলা নং

Title Suit/Case No.02 of 2004.

Md. Nurul Islam & others .... Plaintiff(s).
Petitioner(s)

Versus.

Ali Hossain & others .... Defendant(s).
Opposite Party.

This suit/case coming on for final hearing on (1)

In the presence of

Advocate(s) Shankar Kumar Saha for — Plaintiff(s).
Pleader(s) — Petitioner(s)

Advocate(s) Md. Rafiqul Islam — for Defendant(s).
Pleader(s) — Opposite party.

And having stood for consideration to this day, the court delivered the following judgment:-

This is suit for ~~partition~~ declaration filed by plaintiff side for declaring title over the scheduled lands along with recovery of khas possession over the 2nd scheduled lands and to declare preliminary decree of suit no.78/81 dated 26.08.84 passed by Ld. 3rd Sub-judge Court, final decree of the same suit as

numbered 251/84 of Ld. 2nd Sub-judge Court along with to declare deed no.6404 dated 17.05.80, deed no.18652 dated 23.12.95 as void, inactive and not binding upon plaintiff side.

The fact in brief is that original owner of the scheduled lands was Tun Gaji and CR khatian no.48/122 was recorded in his name. Then he died leaving son Amiruddin and daughter Esha Bibi. Though CR khatian was recorded in the names of Amiruddin it never effected title possession of Esha Bibi. Then Esha Bibi died leaving two sons Najumuddin @ Nasarluddin and Basaruddin. As their mother Esha Bibi died in childhood maternal uncle Amiruddin brought up them and daughter of Amiruddin, Fatema was married to Nasaruddin. Then 1st, 2nd

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and 3rd scheduled lands were sold in auction and Zamindar Hossam Haider Chowdhury purchased the lands. Then Hossam Haider executed `Brittinama' (বৃত্তিনামা) no.1850 dated 18.07.1911 in favor of Hossa Miah Madrashwa and after auction purchase Hossam Haider called for kabuliyat from Amiruddin, Nasaruddin and Basaruddin. Then they executed kabuliyat dated 27.03.1913. Nasaruddin sold 71 decimal lands to Altab Ali through deed dated 12.06.1919 and plaintiff no.12 is the daughter of Altab. SA khatian no.75 was recorded in his name. Nasaruddin died leaving wife defendant no.18, four sons Mir Hossain and defendant no.6/7/8 and two daughters defendant no.9/10. Defendant no.11-16 are the heirs of Mir

Hossain. Amiruddin died leaving daughters Alemjan, Kulsum (predecessor of defendant no.19/20), Fatema, Joynab and sons Oli Ahamad, Ali Ahmad. After death of Oli Ahmad Fatema and Ali got the lands. Wife of Ali Ahmad executed nadabi deed in favor of defendant no.18, Alemjan sold 12 decimal lands to plaintiff no.6 through deed no.153 dated 8/1/76 and she also gifted 44 decimal lands to her two minor grandsons through deed no.154. Then Sirajul Islam on behalf of the aforesaid minor as father sold the said 44 decimal lands to plaintiff no.1-4 through deed no.15663/15664/15665/15666 and accordingly plaintiff no.1-4/6 has been in possession of 56 decimal lands of the schedule. Defendant no.18 Fatema sold 91

decimal ____ lands ____ in ___ total ____through ___ deed no.2959/1990/4291/1918/3049/4292/2739___ registered __ in different dates. Fatema defendant no.18 gifted 2 acres of lands to her sons Osman and Mir Hossain through deed no.13205 dated 26.06.76 and in suit no.72/78 defendant no.6 got 2 acres of lands through solehnama and he sold 58 decimal lands to plaintiff no.1-4/13-15/13-16 through deed no.2242/980/5990. Defendant no.11-16 got lands from father Nasaruddin and in solehnama executed in Suit no.72/78 and sold 114 decimal lands ___ to ____plaintiff ____ side ___ through ____ deed no.3659/13580/2530/2522/2529/2521. Defendant no.6/7/8 and Mir Hossain sold 71 decimal lands through deed no.2682/2683

and defendant no.6-8, Kulsum sold 4 decimal lands to plaintiffs through deed no.3356/155, predecessor of defendant no.12-17 sold 4 decimal lands and Amir Hossain as guardian of his minor son Anowar Hossain sold 19 decimal lands through deed no.8105, Mir Hossain as guardian of defendant no.13 sold 10 decimal lands through deed no.1718 and Mir Hossain also sold 20 decimal lands through deed no.1470 to plaintiff side. Defendant no.19/20 sold 12 decimal lands through deed no.3355 to plaintiff no.5. Father of defendant no.12 inherited 71 decimal lands. Accordingly plaintiff side has been in possession of 5.12 decimal of the scheduled lands. SA khatian no.18/19/20 of Mandari mouja, 206/207/190 of

Joykamta mouja, 18/75 of Raipur mouja had been recorded in the names of plaintiffs' predecessor. Defendant 1-16 had fabricated two deeds no.8056/5042 from defendant no.17/18 in respect of 512 decimal lands of the schedule fraudulently and mentioned in the plaint of suit no.78/81 of 3rd Sub-Judge Court (renumbered as 305/81 in 4th Sub-judge Court) of those non-existent deeds. For the above mentioned suit plaintiffs' title over the suit lands has been affected. Defendant side managed ex-parte decree in suit no.78/81 (305/81) in secret and plaintiff side had no knowledge of the suit. Even plaintiff side was not aware of the deed no.8056/5042. Moreover plaintiff side got the information on 28.11.84. Plaintiff side

was dispossessed from the suit lands through execution case no. $\frac{1/04}{7/84}$ on 30.09.14 and thus cause of action arose and hence this suit is filed.

On the other hand defendant no.1-5 by submitting w/s denied all material allegations and contending inter alia that the suit is not maintainable in its present form and manner; the suit is barred by defects of parties, consent, waiver, estoppels and acquiescence; the suit is barred by res judicata; there is no cause of action. According to w/s, Amiruddin was owner of 304 decimal, 181 decimal and 222 decimal lands of CR khatian no.7/48/122 respectively and CR khatian was recorded in his name. Nasaruddin and Basaruddin never had any title

possession over the scheduled lands. Amiruddins' daughter defendant no.18 Fatema Bibi was got married to Nasaruddin of Mandari mouja and he lived in the house of Amiruddin and his brother Basaruddin was the caretaker of Amiruddin's property. Then Amiruddin died leaving third wife Sabjan Bibi, two sons Oli Ahmad, Ali Ahmad, defendant no.18 as daughter from 3rd wife, daughter Joynab from 1st wife and daughters defendant no.17 (recently dead), Kulsum form 2nd wife. If Nasaruddin, Basaruddin fabricated any kabuliyat in respect of scheduled lands the same was inactive and illegal. Then Ali Ahmad died leaving wife Joygun, brother Oli and sister defendant no.18 as heirs. Oli Miah died leaving defendant no.18 as only heir.

Joynab d/o Amiruddin and Joygun w/o Ali Ahmad executed nadabinama in favor of defendant no.18. Accordingly defendant no.18 got the total of the scheduled lands and sold 145 decimal lands through deed no.8056 dated 14.12.1968 to defendant no.1/4/5 and 367 decimal lands to defendant no.1-3 through deed no.5042 dated 03.06.1969. and defendant no.1-5 have been in possession of the scheduled lands. However, during liberation war Chouddagram SR office was burnt and so at present it is not possible to get certified copy and original copy was lost. In that situation defendant no.17/18 executed nadabinama deed dated 17.02.7983 in favor of defendant no.1--5. Then as plaintiff defendant no.1-5 filed partition suit

no.78/81 in 3rd Sub-judge Court and defendant no.17/18 of present case was included as defendant no.1/2 of that suit fathers of plaintiff no.5/6/13-16 Ali Miah, Abdus Samad were included as defendant no.8/11 of that suit. In that suit defendant no.8/11 asked for deeds no.8056/5042 and as those deeds were submitted they did not contest in that suit. Then plaintiff no.1-4 of the present suit submitted petition u/ord. I rule 10 in that suit and the petition was disallowed as they failed to submit any deeds in support of their claims. Defendant no.1-5 filed suit no.305/81 for permanent injunction against the plaintiffs of present suit in 4th Sub-judge Court and Ld. Court passed order for temporary injunction against the

plaintiff no.1/3-7/9/13-16 which is under proceedings in Laksam Assistant Judge Court (renumbered as 516/83). Plaintiff was well informed of the suit no.78/81 and 305/81 and fraudulently filed this suit only to harass defendant no.1-5 plaintiff side has no title possession over the suit lands and the suit must be dismissed.

Defendant no.51/52/54 submitted w/s supporting the case of defendant no.1-5. According to them, defendant no.51/52 purchased 12 decimal lands of CR khatian no.7 from defendant no.12 i.e. heir of Kulsum through deed dated 17.05.1980. Defendant no.51 sold 4 decimal lands to defendant no.54 through deed dated 23.12.1995. Plaintiff side has no title

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possession and so the suit must be dismissed with cost.

ISSUES

The following issues have been re-framed after considering both parties' pleadings:-

1) Whether the suit is maintainable.

2) Whether the suit is barred by res judicata.

3) Whether the suit is barred by waiver, estoppels and acquiescence.

4. Whether the plaintiff has title possession over the suit lands.

5) Whether partition suit no. $\frac{78/81}{251/84}$ is liable to be cancelled.

6. Whether deed no.8056 dated 14.12.68 , deed no.5042 dated 3.06.69, deed no.6404 dated 17.05.80 and deed no.18652 dated 23.12.95 is illegal, void and inactive.

7. Is the plaintiff entitled to get relief as prayed for ?

Findings & Decision

As pw1 of the suit Sirajul Islam i.e. clerk of the Chouddagram Sub-registry office.

To prove their case plaintiff side examined five witnesses, pw2-Nur Mohammad, pw3-Saleh Ahmad, pw4-Ali Miah, pw-5 Mahabbat Ali, pw-6Mohammad Ali and submitted documents marked as from Exhibit-1(series) to 13.

On the other hand, defendant no.1-5 examined Md. Ali

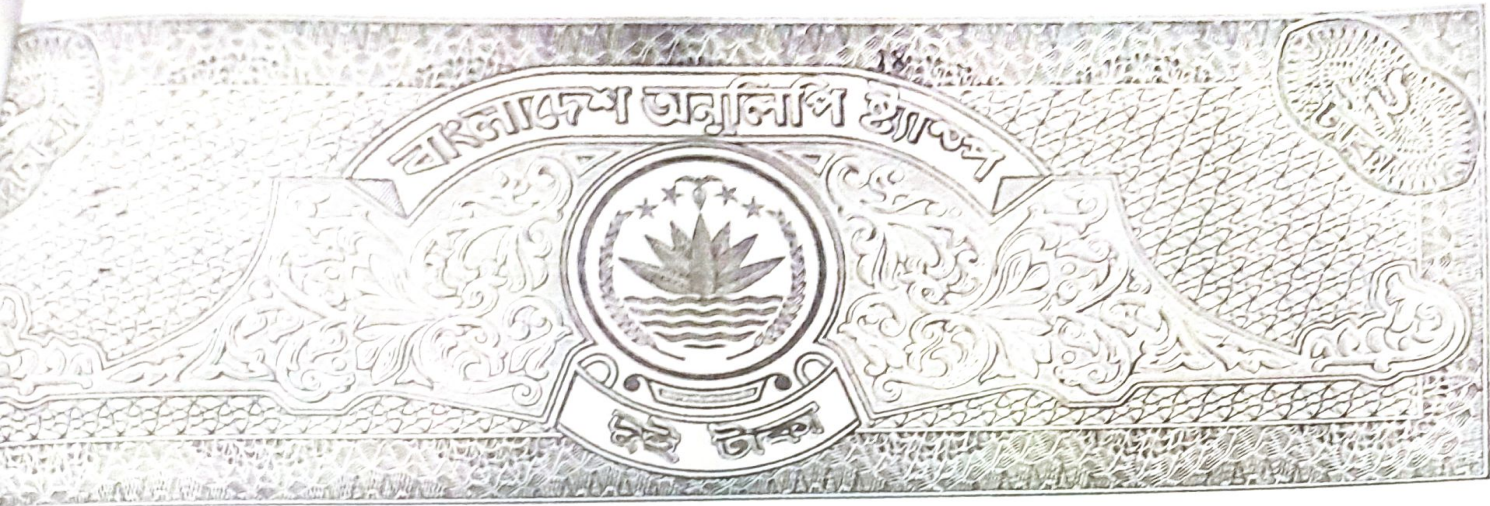
Hossain as Dw1, Nurujjaman as Dw11, Tofazzal Hossain as Dw2, Abu Taher as Dw3 and submitted documents marked as from Exhibit-ক, ক/১, খ, গ and ঘ, ঘ/১, ঘ/২,

Defendant no.51/52/54 examined Fajlur Rahman as Dw4, Ahmad Hossain as Dw5 and submitted documents marked as exhibit-ক(১)/ক(২).

Issue No.1, 2, 3 & 4

As all the issues are related taken together for discussion and proper adjudication.

According to defendant no.1-5, original owner of the scheduled lands was Amiruddin and CS khatian no.7/122/48 [Ext.1, 1/ka, 1/kha] was recorded in his name. However,

plaintiff side claims that original owner of the lands was Tun Gaji and he died leaving son Amiruddin and daughter Esha Bibi. But mistakenly named of Esha Bibi was not recorded in the mentioned CS khatian. In support of such claimed plaintiff side neither submits any documentary nor oral evidences. On the other hand, from CS khatian no.7/122/48 it is found that Amiruddin's name had been recorded as tenant. Plaintiff side also claimed that Esha had two sons Nasaruddin, Basaruddin and they got the share of their mother as heirs. Again plaintiff side claimed that Zamindar Hossain Haider Chowdhury purchased the scheduled lands in auction when the rent of lands remained unpaid and through `Brittinama' no.1850 dated

18.07.1911 [Ext-9]. Then he called for kabuliyat from CS tenant Amiruddin and Nasaruddin, Basaruddin. Amiruddin and Nasaruddin, Basaruddin executed kabuliyat dated 27.03.1913 [Ext-3/3(ka)] towards Hossam Haider Chowdhury. However, no auction documents in the name of zamindar Hossain Haider Chowdhury has been submitted before the court. Moreover on perusal of exhibit-3/3(ka) it is found that even those two kabuliyat do not disclose the fact how Hossain Haider Chowdhury became owner of the lands and in the deed no auction deed number is mentioned. Accordingly it is determined that plaintiff side has failed to prove the validity of kabuliyat executed by Amiruddin and Nasaruddin, Basaruddin.

Moreover it is also not proved that as heir of Esha Bibi, Nasaruddin and Basaruddin got the scheduled lands.

Beside this in the plaint plaintiff side claimed that heirs of Basaruddin died leaving wife and brother Nasaruddin. Then predecessor of plaintiff no.1-4 purchased share of Basaruddin's wife. However, in the plaint neither name of Basaruddin wife's nor the portion of lands sold by her is mentioned and no deed number is also mentioned. So, it is not clear how much lands plaintiffs' predecessor purchased from Basaruddin's wife. Moreover, from exhibit-1(ga)/1(gha) it is clearly proved that Basaruddin had no title possession over the suit lands as in SA khatian no.19/190 name of Basrauddin was not recorded as

tenant.

Plaintiff side in plaint also mentioned that they purchased lands from defendant no.6-16 but number of deed, quantity of lands and names of vendees is mentioned.

In the plaint it is claimed that Amiruddin died leaving sons Oli Ahmad, Ali Ahmad and four daughters Fatema, Kulsum, Elemjan i.e. defendant no.17, Joynab. However, defendant no.1-5/51/52/54 claims that Amiruddin died leaving 3rd wife Sabjan, two sons, one daughter i.e. defendant no.18 from Sabjan, one daughter Joynab from 1st wife, two daughters Kulsum, Elemjan from 2nd wife. As two sets of defendants claim that during death of Amiruddin his 3rd wife

was alive the same be admitted as authentic and proved. Accordingly wife got 76.5 decimal, each daughter got 66.97 and each son got 133.87 decimal lands. Then after death of Sabjan Bibi defendant no.17 (recently dead)/18 each became owner of total 82.27 decimal lands. Then Oli Ahmad died leaving wife and sister. Wife of Oli Ahmad executed nadabinama in favor of Fatema i.e. defendant no.18 of this suit. However nadabinama does not create any title and no such nadabinama has been submitted before the present Court. So, the plaintiff side has failed to prove that Fatema got the lands of Oli Ahmad.

Then plaintiff side claimed that Elemjan sold 12 decimal

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lands of plot no.532 CS khatian no.48 through deed no.153 dated 08.01.1976 [Ext-2] to plaintiff no.6 and gifted 44 decimal lands to grandson Nurul Hoque, Abdul Barik through deed no.154 [Ext-2(ka)] by mentioning all the plot numbers of CS khatian no.7. No boundary is mentioned in the deed no.154. Then Sirajul Islam i.e. father of Nurul Hoque, Abdul Barik sold the 44 decimal lands of deed no.154 on behalf of his sons through deed no.15663/15664/15665/15666 dated 22.11.1979 [Ext.-2(kha)/2(ga)/2(gha)] to plaintiff no.1-4. So, title of plaintiff side over 56 decimal lands of the schedule is clearly proved.

According to plaintiff side, predecessor of plaintiff no.1-

-4 purchased 6 decimal lands through deed no.2959 dated 8.04.1950 [Ext.-2/চ], 20 decimal lands through deed no.4291 dated 04.04.1977 [Ext.-2/চ(১)] and 12 decimal lands through deed no.1900 dated 02.03.1954 [Ext.-2/ল] in total 38 decimal lands from defendant no.18. It is also claimed that defendant no.18 sold 20 decimal lands to plaintiff no.5 through deed no.1918 dated 20.02.76 [Ext.2/ছ]. 21 decimal lands to plaintiff no.9-11 through deed no.3049 dated 11.03.76 [Ext.-2/জ] and deed no.4292 dated 04.04.77 [Ext.-2/ঝ], 12 decimal lands to plaintiff no.8 through deed no.2731 dated 04.03.76 [Ext.-2/এঃ] in total 91 decimal lands. Accordingly title of plaintiff side over 91 decimal lands is proved.

Plaintiff side in the plaint also claimed that pro-forma defendant no.6 got 2 acres of lands through Solehnama submitted in title suit no.78/72 as filed in 4th Munsef Court, Comilla, Then defendant no.6 sold 58 decimal lands to plaintiff side through deed no.2242 dated 16.02.78 [Ext.-2/ট], deed no.980 dated 28.01.78 [Ext.2/ঠ] and deed no.5990 dated 04.10.77 [Ext.-2/ড]. However, no document in relation to title suit no.78/72 is submitted before the Court to prove title of defendant no.6. Accordingly it is decided that plaintiff side has failed to prove their title through exhibit-2/ট, 2/ঠ, 2/ড.

Plaintiff side also claimed that heirs of Nasaruddin sold 114 decimal lands to them through deed no.3659 dated

31.03.77 [Ext.-2/ঢ], deed no.13580 dated 20.07.78 [Ext.-2/ন], deed no.2522, 2529, 2530 dated 15.02.79 [Ext.-2/ত, ২/থ, ২/দ]. However, as plaintiff side failed to prove title of Nasaruddin over the suit lands and did not submit in support of title suit no.78/72 before the suit lands it is determined that plaintiff side has failed to prove their title and possession in respect of 114 decimal lands of the schedule.

Plaintiff side in the plaint also claimed that defendant no.6-8 i.e. heirs of Nasaruddin sold 71 decimal lands to plaintiff side through deed no.2682, 2683 [Ext.-2(ম), (ন)]. However, it is already determined that Nasaruddin had no title possession over the suit lands so deeds executed by his heirs

are not legally effective at all.

According to plaintiff side they purchased 2 decimal lands from Amiruddin's daughter Kulsum through deed no.3356 dated 18.03.76 [Ext.-2(প)] and the same is proved. However, though plaintiffs claimed they purchased 4 decimal lands from defendant no.6 and predecessor of defendant no.12--27 through deed no.1917 and 2 decimal lands from defendant no.7 through deed no.155 [Ext.2(ফ), (ব)] the same is not proved at all. plaintiff side also claimed that Mir Hossain i.e. son of Nasaruddin sold lands to them through deed no.8105, 1718, 1470 [Ext.2(ভ), (ম)] but as Nasaruddin's title was not proved plaintiff side did not attain any title possession through

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the said deeds.

Defendant no.19/20 i.e. heirs of Amiruddin's daughter Kulsum sold 12 decimal lands to plaintiff no.5 through deed no.3355 [Ext.-2(ঘ)]. In the said deed and the same is proved.

Though plaintiff side claims that plaintiff no.12 as daughter of Nasaruddin, Basaruddin got 71 decimal lands through inheritance title of Nasaruddin, Basaruddin was not proved and moreover from the plaint it is not clear as whose daughter she got lands and so the same is not prove at all.

Accordingly plaintiff side claims title over 5.12 acres of scheduled lands through several deeds and as heirs of Nasrauddin. However, from the above discussion it is clearly

proved that plaintiff side has title over 161 decimal lands of the schedule and they have failed to prove their title over the rest 350 decimal lands of the schedule. Moreover, as it is a suit for declaration scheduled lands must be specific. In the schedule to the plaint plaintiff side do not include any boundary of the suit lands and most of their deeds through which they claim title possession over the suit lands do not include any boundary of the lands purchased by them. So, it is determined that suit land is not specifically identified and accordingly plaintiff side is not legally entitled to get a decree of title in respect of the total 5.12 acres of suit lands though their title over 161 decimal lands of the schedule is proved through several deeds. Plaintiff

side also claimed that they were dispossessed from the 2nd scheduled lands on 30.09.14 through decree execution case no. $\frac{1/04}{7/84}$ and thus claimed for recovery of possession of the lands by evicting defendant side from the suit lands. However, as plaintiff's title in respect of 1.61 acres of lands of the schedule is proved and as there is no specific boundary of the said lands they are not entitled to get a decree for recovery of possession by evicting defendant no.1-5 from the suit lands over which they have been able to prove their title. Moreover, though it is admitted that plaintiff side had been dispossessed by the decree of partition suit no. $\frac{78/81}{251/84}$ in respect of 5.12 acres of lands of the schedule they have seriously failed to prove title in regard

to the total claimed lands.

Plaintiff side in the prayer of the plaint claimed relief against judgment, preliminary and final decree of partition suit no. $\frac{78/81}{251/84}$ which according to them was obtained fraudulently by the defendant no.1-5 of present suit. Defendant no.1-5 in their w/s has claimed that plaintiff side was well informed of the partition suit no. $\frac{78/81}{251/84}$ [Ext.-7(se)] and their predecessor submitted petition u/order 1 rule 10 for adding them as parties to the suit. But the petition was disallowed as they failed to submit documents in support of their petition. Against the said order they filed revision in the Honorable High Court Division which was also dismissed. The fact is admitted by plaintiff

side. However, plaintiff side claims that defendant no.1-5 with the help of defendant no.17/18 concocted nadabinama deed no.12598/12599 dated 14.06.83 [Ext.-ক/ক(১)] by mentioning the reference of deed no.8056 dated 14.12.68 in respect of 1.45 acres of lands and deed no.5042 in respect of 3.67 acres of lands and mentioned of the both deeds in the 3rd paragraph of plaint of perpetual injunction suit no.305/81 which were shown as registered in Chouddagram sub-registry office. However, those deeds were not in existence at all and in the present suit defendant no.1-5 did not submit any copy of both deeds and in their w/s they claim that those deeds had been lost and for that reason in respect of 5.12 acres of lands defendant no.17

(recently dead)/18 executed nadabinama deed no.12598/12599 dated 14.06.83 [Ext.-ক/ক(১)]. Defendant side in the present suit submitted petition to exempt them from submitting copy of those deeds and through order dated 19.11.2014 they were debarred from submitting those deeds during evidence recording stage. Defendant no.1-5 even did not submit any certified copy of those deeds. From the record it is found that to prove the non-existence of those deeds plaintiff side submitted petition before the present Court to call for concerned register from the sub-registry office and the bearer from registry office deposed in the Court as Pw1-Sirajul Islam and from the concerned register it was found that deed no.8056

was not registered in the Chouddagram Sub-registry office and the vendee of the deed no.5042 was some Rangu Miah i.e. not the defendant no.17/18. So, it is clearly proved that deed no.8056 and 5042 were not in existence and defendant no.1-5 obtained fraudulent preliminary and final decree through partition suit no. $\frac{78/81}{251/84}$ by submitting nadabinama no.12598/12599 which was executed by mentioning deed no.8056/5042. According to law, nadabinama neither creates any title nor pass any possession in respect of any lands. Moreover, in the partition suit no. $\frac{78/81}{251/84}$ defendant no.1-5 attained decree on basis of nadabinama which were executed on basis of two fraudulent and non-existence deed

no.8056/5042 and through which defendant no.1-5 did not get any title possession over the suit lands. Though in the w/s it is claimed that defendant no.18 in partition suit no. $\frac{78/81}{251/84}$ admitted that she sold lands to defendant no.1-5 it is already decided that nadabinama does not create any title and judgment decree of that suit was obtained by them fraudulently on basis of two non-existence deeds. Defendant no.51/52/54 supported the statements of defendant no.1-5 which has already been proved as false and fraudulent so, there is no legal basis to consider their claim too. However, from the record and evidence it is found that they purchased 12 decimal lands from defendant no.22 i.e. son of Amiruddin's daughter Kulsum

through deed no.6404 dated 17.05.80 [Ext.-ক(১)] and the said deed did not affect title of plaintiff over the suit lands. Accordingly deed no.18652 dated 23.12.95 [Ext.ক(২)] also did not affect title of plaintiff side over the suit lands which was executed by defendant no.51 in favor of defendant no.54.

In the present suit plaintiff side claims to declare the judgment, preliminary and final decree as void, ineffective along with to declare deed no.8056/5042 as fabricated, false, inactive. From the above discussion it is already determined that plaintiff side has title over 1.61 acres of the scheduled lands and their title have been affected by the judgment decree of partition suit no. $\frac{78/81}{251/84}$ and it is also proved that defendant

side obtained fraudulent decree in respect of the scheduled lands which affect title of plaintiff side in respect of 161 decimal lands. However, as it is already decided that plaintiff side has failed to prove title over total 5.12 acres of lands legally it is not possible to pass a decree for cancelling judgment decree of partition suit no. $\frac{78/81}{251/84}$ which was filed in respect of 5.12 acres of lands.

Beside these, it is already decided that deed no.8056/5042 has no existence at all and so those deeds are void ab-initio. However, as plaintiff side has failed to prove their title in respect of total 5.12 acres of lands they are not entitled to get a decree against the deeds also. Moreover, as

those deeds do not exist at all declaration of those deeds as illegal and void is not necessary at all.

Hence, the issues are decided according to the above discussion.

Issue No.5

It is already been decided that plaintiff side has clearly proved their title over 161 decimal lands of the schedule but as no specific boundary has been mentioned in the schedule to the plaint plaintiff side is not entitled to get a decree for declaration of title along recovery of possession by evicting defendant no.1-5 from that 5.12 acres of lands of the schedule. As plaintiff side is not legally entitled to get a decree for declaration of title along with recovery of possession

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accordingly they are not entitled to get relief against other prayers of the plaint too.

So, it is determined that plaintiff side is not entitled to get relief as prayed for.

Court fee paid is correct.

Hence,

ORDERED.

that the suit be dismissed on contest against defendant no.1-5/51/52/54 and ex-parte against the rest without any cost.

Written & corrected by me.

Sd. Illegible
6.11.16
2nd Joint District Court,
Comilla.

Sd. Illegible
(Shyla Sharmin)
6.11.16
2nd Joint District Court,
Comilla.

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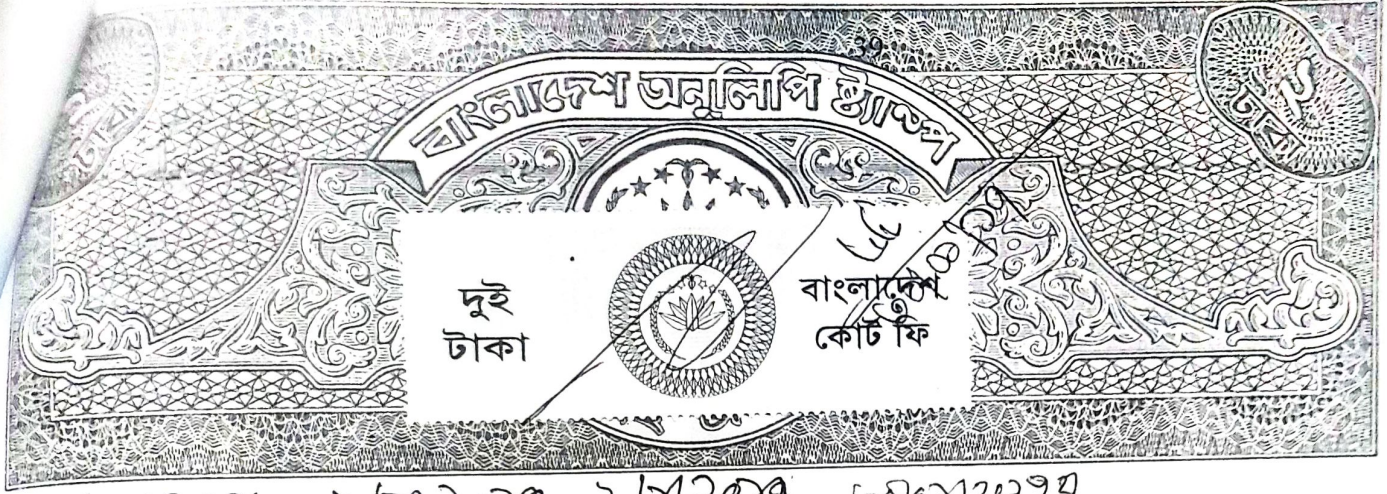
হাইকোর্ট ফরম নং (জে) ২৫-এ

আদিম মোকদ্দমার ডিক্রী

(দেওয়ানী কার্য্যবিধি আইনের ২০ অর্ডার ৬ ও ৭ রুল)

জেলা-কুমিল্লা।

মোকামঃ যুগ্ম জেলা জজ ২য় আদালত, কুমিল্লা।

দেওয়ানী মোকদ্দমা নং-২/২০০৪ ইং।

বদলী সূত্রে প্রাপ্তির তারিখঃ ১১/৪/২০০৪ ইং।

১))মোঃ নুরুল ইসলাম, ২) নূর মোহাম্মদ, ৩) সামছুল হক, ৪) আবুল খায়ের, সর্ব পিতামৃত-মৌঃ মোহাম্মদ আলী হোসেন, সাং-মানদারী, ৫নং বাদী মৃত তোরাব আলীর ওয়ারিশঃ-৫(ক)-স্ত্রী রেজিয়া বেগম, পতিমৃত-তোরাব আলী, ৫(খ)-পুত্রঃ ইব্রাহীম খলিল, ৫(গ)-পুত্রঃ মোহাম্মদ আলী, ৫(ঘ)-কন্যাঃ শামিমা আক্তার, ৫)ঙ)-কন্যাঃ রোকেয়া আক্তার, পিতামৃত-তোরাব আলী, সাং-রায়পুর, থানা-লাকসাম, জিলা-কুমিল্লা, ৬) মনোহর আলী, পিতামৃত-আলী মিয়া, সাং-রাইপুর, ৭) সুরুজ মিঞা, পিতামৃত-

সফর আলী, ৮) সুফিয়া খাতুন, পতি-সুরুজ মিঞা, সাং-রাইপুর, ৯) মোবারক হোসেন, ১০) মফিজুল হক, ১১) নজির আহাম্মদ, পিতা-জয়নাল আবদিন, সাং-পঃ জয়কামতা, মৃত আম্বিয়া খাতুন এর ওয়ারিশঃ-পুত্রঃ ১২(ক)-জসিম উদ্দিন, ১২(খ)-বশির উল্লা, ১২(গ)-আবুল কালাম, সর্ব পিতামৃত-ইব্রাহীম খলিল, সাং-শিকারপুর, থানা-সদর দক্ষিন, ১২(ঘ)-নাছিমা আক্তার, পতি-আঃ লতিফ, সাং-কুসুম বাড়ী, থানা-সদর দক্ষিন, ১২(ঙ)-রোকেয়া বেগম, পতি-মোঃ মারুফ, সাং-ছোট বাতুয়া, থানা-বরুড়া, জেলা-কুমিল্লা, ১৩) আবদুল মালেক, ১৪) আবদুল খালেক, উভয় পিতা-আবদুল ছামাদ, সাং-দঃ জয়কামতা, ১৫) মোঃ নুরুল আমিন, ১৬) মোহাম্মদ আলী, উভয় পিতা-আবদুল ছামাদ, সাং দঃ জয়কামতা, সর্বথানা-লাকসাম, জিলা-কুমিল্লা। ...... বাদীগন।

বনাম

১) আলী হোসেন, ২) আহাম্মদ হোসেন, ৩) জয়নাল আবদিন, সর্ব পিতামৃত-ইয়াকুব আলী, সাং-দঃ জয়কামতা, ৪(ক)-স্ত্রীঃ করফুলের

নেছা, পতিমৃত-আলী আজ্জম, ৪(খ)-পুত্রঃ আঃ মালেক, ৪(গ)-কন্যা মরিয়ম বিবি, সর্ব পিতামৃত-আলী আজ্জম, সাং-রাইপুর, পোঃ-হাজতখোলা, থানা-লাকসাম, ৪(ঘ)-কন্যা নাছিমা আক্তার, পতি-নাছির আহাম্মদ, সাং-জগৎপুর, থানা-কোতয়ালী, জিলা-কুমিল্লা (Amended vide order dated 17.04.2000) .... বিবাদীগন।

৫) আয়েশা খাতুন, পতিমৃত-মীর হোসেন, সাং-মান্দারি, উপজেলা-লাকসাম, কুমিল্লা। ..... মূল বিবাদীগন। মৃত নছর উদ্দিনের ওয়ারিশঃ-৬) ওছমান আলী, পিতামৃত-নছর উদ্দিন, সাং-রাইপুর, ৭) সিরাজুল হক, পিতা-ঐ, সাং-ঐ, ৯) কর্তন (আদেশ নং-২২, তাং ১/৪/৯২) ১০) আবিদা খাতুন, পতি-আলী আকবর, সাং-উঃ জয়কামতা, মৃত মির হোসেনর ওয়ারিশঃ-১১) স্ত্রীঃ আয়েশা খাতুন, সাং-মানদারী, ১২) আলেক হোসেন, সাং-ঐ, ১৩) আবদুল কাদের, সাং-ঐ, ১৪) রাবেয়া খাতুন, সাং-ঐ, ১৫) সাবেজা বেগম, সাং-ঐ, ১৬) রেহানা বেগম, সাং-ঐ, সর্ব পিতামৃত-মির হোসেন, সাং-মান্দারী, উপজেলা-লাকসাম, জিলা-

কুমিল্লা। মৃত আমির উদ্দিনের ওয়ারিশঃ-১৭) কর্তন (Amendd vide order no.92 of 23.03.95), ১৮) ফাতেমা খাতুন, পতিমৃত-নছর উদ্দিন, সাং-মান্দারী, উপজেলা-লাকসাম, মৃত কুলছুম বিবির ওয়ারিশঃ-১৯) মরিয়ম বিবি, পিতামৃত-আলী আজগর, সাং-মান্দারী, ২০) হাজেরা বিবি, পতি-সিরাজুল ইসলাম, সাং-দক্ষিন হাজতীয়, উপজেলা-লাকসাম, জিলা-কুমিল্লা। ... মোকাবিলা বিবাদীগন। ২১) জয়গুন বিবি, পতি-অজ্ঞাত, সাং-জয়কামতা, থানা-লাকসাম, জিলা-কুমিল্লা, ২২) চান্দ মিঞা, পিতামৃত-আবদুল আজিজ, সাং-লাইপুরা, ২৩) রাবিয়া খাতুন, পতিমৃত-আবদুল আজিজ, সাং-মান্দারিয়া, থানা-কোতয়ালী, জিলা-কুমিল্লা, ৮/৬/৯৮ ইং তারিখের আদেশে মৃত ২৪ নং বিবাদীর ওয়ারিশের নামঃ-২৪(ক)-হাবিবুল্লাহ, ২৪(খ)-আঃ মান্নান, ২৪(গ)-নয়ন তারা, ২৪(ঘ)-জাহেদা বেগম, ২৪(ঙ)-লহরের নেছা, ২৪(চ)-মোমেনা খাতুন, সর্ব পিতামৃত-আলী মিয়া, সাং-দক্ষিন জয়কামতা, ২৫) মোঃ হাবিবুল্লা, পিতামৃত-আলী মিয়া, ২৬) আঃ মন্নান, পিতামৃত-

আলী মিঞা, সাং-জয়কামতা, ২৭) নয়ন তারা, পতিমৃত-কালা মিঞা, সাং-শাকতলা, থানা-লাকসাম, জিলা-কুমিল্লা, ২৮) জায়েদা খাতুন, পতি-আঃ ছামাদ, সাং-শাকতলা, থানা-লাকসাম, জিলা-কুমিল্লা, ২৯) নাজতের নেছা, পতি-আঃ হামিদ ওরফে সুনি মিয়া, সাং-কালিকাপুর, থানা-বরুড়া, জিলা-কুমিল্লা, ৩০) মোমেনা খাতুন, পতি-মোস্তাফিজুর রহমান, সাং-নোয়াপাড়া, থানা-বরুড়া, জিলা-কুমিল্লা, ৩১(ক)-সামছুল হক, ৩১(খ)-ছলিমুল্লাহ, ৩১(গ)-কলিমুল্লাহ, ৩১(ঘ)-রাহেলা বেগম, সর্ব পিতামৃত-আশ্বাদ উল্লাহ, সাং-জয়কামতা, ৩১(ঙ)-ফিরোজা বেগম, পতি-আলী আকবর, সাং-জয়কামতা, ৩২) নাম কর্তন, ৩৩) নাম কর্তন (৮/৬/৯৮ ইং তারিখের আদেশ মতে সংশোধিত), ৩৪) লালমতি বিবি, পতিমৃত-আঃ কাদের, সাং-জয়কামতা, ৩৫) আবু জাহের, ৩৬) মাসুমা খাতুন, ৩৭) ছালহা বেগম, সর্ব পিতামৃত-আঃ কাদের, ৩৮) রহিমা খাতুন, পতিমৃত-আঃ মন্নান, সাং-হলদিয়া, থানা-লাকসাম, জিলা-কুমিল্লা, ৩৯) রাহাতের নেছা, পতি-আবুল হাশেম, সাং-

রামচন্দ্রপুর, থানা-চৌদ্দগ্রাম, জিলা-কুমিল্লা, ৪০) সামছুন নাহার, পতি-আঃ রব, সাং-মশকিপুর, থানা-বরুড়া, জিলা-কুমিল্লা, ৪১) আঃ লতিফ, পিতামৃত-হাজি আবু তালেব, সাং-দক্ষিন জয়কামতা, ৪২(ক)-ফয়েজ আহম্মদ, পিতামৃত-আনু মিয়া, ৪৩(খ)-রহিমা বেগম, পতি-ইব্রাহীম, ৪৪(গ)-হাফেজা খাতুন, পতিমৃত-আনু মিয়া, সাং-দঃ জয়কামতা, থানা-কোতয়ালী, জিলা-কুমিল্লা। ... বিবাদীগন। ৪৫) হাফেজা খাতুন, পতি-আব্বাছ আলী, ৪৬) আবু তাহের, ৪৭) আবদুল হক, উভয় পিতা-সামছুল হক, ৪৮) সামছুল হক, পিতামৃত-ছলিম উদ্দিন, সাং-রায়পুর, ৪৯) নূরের নেছা, পতি-মফিজের রহমান, সাং-রায়পুর, থানা-লাকসাম, জিলা-কুমিল্লা, ৫০) আমেনা খাতুন, পতি-জুলফু মিঞা, সাং-লক্ষীপুর, ৫১) আনোয়ার হোসেন, ৫২) জাহেদা খাতুন, উভয় পিতা-সিরাজুল ইসলাম, সাং-দঃ হাজতিয়া, ৫৩) ফজলুর রহমান, পিতা-আনা মিঞা, ৫৪) হালিমা খাতুন, পতি-ফজলুর রহমান, ৫৫) মোহাম্মদ কামাল হোসেন, পিতা-সিরাজুল ইসলাম, সাং-দক্ষিন হাজতিয়া, থানা-

৭

৫৪৭

Amended vide no 371 dt 12/1/17

লাকসাম, জিলা-কুমিল্লা, ৫৬) সহিদ উদ্দিন আহাম্মদ, পিতামৃত-জহির উদ্দিন আহাম্মদ, সাং-মান্দারী, থানা-লাকসাম, জেলা-কুমিল্লা। .... মোকাবিলা বিবাদীগন।

দাবী বাবদ

স্বত্ব সাব্যস্থক্রমে খাস দখলের প্রার্থনা সহ মোকদ্দমা ডিক্লারেশন বাবদ তায়দাদ মং ৯৪,৬০০/- টাকা (আপীল মোকদ্দমার আদেশ নং-১১, তাং ৯/১/০৭ ইং মোতাবেক সংশোধিত)।

এই মোকদ্দমা অদ্য ৬/১১/২০১৬ ইং তারিখে চূড়ান্ত নিস্পত্তির জন্য বেগম শায়লা শারমিন, যুগ্ম জেলা জজ ২য় আদালত, কুমিল্লা এর সমক্ষে বাদীপক্ষে মি. শংকর কুমার সাহা, এডভোকেট এবং বিবাদীগনের পক্ষে মি. মোঃ রফিকুল ইসলাম, এডভোকেটদের সাক্ষাতে আদেশ হয় যে, that the suit be dismissed on contest against defendant no.1-5/51/52/54 and ex-parte against the rest without any cost.

৮

১ম তপছিল

জিলা-কুমিল্লা, উপজেলা-লাকসাম, মৌজে-মাদারী মধ্যে বিগত চাকলা রোশনাবাদ জরীপের ৭নং এবং বিগত এস,এ, জরীপের ১৮/১৯/২০ নং খতিয়ান ভূক্তঃ-

(ক)

ক্রমিক নং	দাগ নং	জমির শ্রেনী	পরিমান
১)	৩৮/৫	ভিটি	.৮০ একর
২)	৩৯	বাগান	.০৪ "
৩)	৪০	নাল	.৬৪ "
৪)	৫৯	ছাট	.২৩ "
৫)	৬১	ভিটি	.১৯ "
৬)	৬২	কুয়ারপাড়	.০৫ "
৭)	৬৩	কুয়া	.০৪ "
৮)	৬৪	ভিটি	.১৬ "
৯)	৬৫	বাগান	.১২ "
১০)	৬৬	বশত	.২৭ "
১১)	৬৭	গড়	.১২ "
১২)	৬৮/১০৪	ভিটি	.০৬ "

মোট=২.২৭ একর

৬৭

(খ)

জিলা-কুমিল্লা, উপজেলা-লাকসাম, মৌজে-মাদারী মধ্যে বিগত চাকলা রোশনাবাদ জরীপের ৪৮ নং খতিয়ান এবং বিগত এস,এ, জরীপের ৩২ ও ১০২ নং খতিয়ান ভূক্তঃ-

ক্রমিক নং	দাগ নং	জমির শ্রেনী	পরিমান
১)	৫৩২	নাল	.৫৬ একর।
২)	৫৩৩	নাল	.৫৪ "
৩)	৫৫৩	নাল	.৭১ "

মোট=১.৮১ একর।

(গ)

জিলা-কুমিল্লা, উপজেলা-লাকসাম, মৌজে-মাদারী মধ্যে বিগত চাকলা রোশনাবাদ জরীপের ১২২ নং খতিয়ান এবং বিগত এস,এ, জরীপের ১৯০ ও ১৯১ নং খতিয়ান ভূক্তঃ-

ক্রমিক নং	দাগ নং	জমির শ্রেনী	পরিমান
১)	৭২৫	নাল	.৭১ একর।
২)	৭১৪	নাল	.১৫ "
৩)	৮৬৯	নাল	.৯৩ "

সর্বমোট=১.৭৯ একর।

সর্বমোট ৬.৩২ একর।

৬০

২য় তপছিল (নালিশী)

জিলা-কুমিল্লা, উপজেলা-লাকসাম, মৌজে-মাদারী মধ্যে বিগত চাকলা রোশনাবাদ জরীপের ৭ নং এবং বিগত এস,এ, জরীপের ১৮/১৯/২০ নং খতিয়ান ভূক্তঃ-

ক্রমিক নং	দাগ নং	জমির শ্রেনী	পরিমান
১)	৩৮/৫	ভিটি	.৭০ একর
২)	৩৯	বাগান	.০৪ "
৩)	৪০	নাল	.৬৪ "
৪)	৬১	ভিটি	.১৯ "
৫)	৬২	কুয়ারপাড়	.০৫ "
৬)	৬৩	কুয়া	.০৪ "
৭)	৬৪	ভিটি	.১২ "
৮)	৬৫	বাগান	.১২ "
৯)	৬৬	বশত	.২৭ "
১০)	৬৭	গড়	.১২ "
১১)	৬৮/১০৪	ভিটি	.০৬ "

মোট=২.৩৫ একর

(খ)

জিলা-কুমিল্লা, উপজেলা-লাকসাম, মৌজে-রাইপুর মধ্যে বিগত

চাকলা রোশনাবাদ জরীপের ৪৮ নং খতিয়ান এবং বিগত এস,এ,

জরীপের ৩২ ও ১০২ নং খতিয়ান ভূক্তঃ-

ক্রমিক নং	দাগ নং	জমির শ্রেনী	পরিমান
১)	৫৩২	নাল	.৫৬ একর।
২)	৫৩৩	নাল	.০২ "
৩)	৫৫৩/৩	নাল	.৭১ "

মোট=১.২৯ একর।

(গ)

জিলা-কুমিল্লা, উপজেলা-লাকসাম, মৌজে-জয়কামতা মধ্যে বিগত

চাকলা রোশনাবাদ জরীপের ১২২ নং খতিয়ান এবং এস,এ,

জরীপের ১৯০ ও ১৯১ নং খতিয়ান ভূক্তঃ-

ক্রমিক নং	দাগ নং	জমির শ্রেনী	পরিমান
১)	৭২৫	নাল	.৭১ একর।
২)	৭১৪	নাল	.১৫ "
৩)	৮৬৯	নাল	.৬২ "

সর্বমোট=১.৪৮ একর।

৩য় তপছিল

মোকামঃ কুমিল্লার ৩য় সাব জজ আদালতের ১৯৮১ ইং সনের ৭৮

নং দেওয়ানী বন্টন মোকদ্দমার আরজির ৩য় দফার বর্ননা মতে ও ২২/২/৮২ ইং এবং ফিরিস্তি যুক্তে আদালতে দাখিলকৃত দলিল যাহার নং-৫০৪২ তাং ৩/৬/৬৯ ইং তারিখ এবং ৮০৫৬ নং দলিল তাং ১৪/১২/৬৮ ইং তারিখের এবং লাকসাম উপজেলা মুন্সেফী আদালতের ৩০৫/৮১ ইং যাহার বর্তমান নং-৫১৬/৮৪ ইং আরজির ৩য় দফায় উল্লেখিত ৫০৪২ তাং ৩/৬/৬৯ ইং এবং ৮০৫৬ তাং ১৪/১২/৬৮ ইং দলিল দুইটি একদা কাল্পনিক জাল, বানাউটি, তঞ্চকী, যোগসাজশী ও অকার্যকর বটে।

৪র্থ তপছিল

জেলা-কুমিল্লা, থানা-লাকসাম, সাব রেজিষ্ট্রি অফিসের ১৭/৫/৮০ ইং তারিখের ৬৪০৪ নং কবলা দলিল। যাহার দাতা চান্দ মিয়া পিতামৃত-আঃ আজিজ, সাং-লক্ষীপুর, থানা-কোতয়ালী---গ্রহিতা, ১) ফজলুর রমান, পিতা-আনা মিয়া, ২) হালেমা খাতুন, পতি-ফজলুর রহমান, সাং-মান্দারী, থানা-লাকসাম, জিলা-কুমিল্লা।

৫ম তপছিল

জিলা-কুমিল্লা, থানা-লাকসাম, সাব রেজিষ্ট্রি অফিসের ২৩/১২/৯৫ ইং তারিখে ১৮৬৫২ নং কবলা দলিল। যাহার গ্রহিতা সহিদ উদ্দিন আহাম্মদ, পিতামৃত-জহির উদ্দিন আহাম্মদ, সাং-মান্দারী, থানা-লাকসাম এবং দাতা ফজলুর রহমান, পিতামৃত-আনা মিয়া, সাং-মান্দারী, থানা-লাকসাম, জিলা-কুমিল্লা।

এবং

এই মোকদ্দমার খরচা বাবদ মবলগে .... অদ্য হইতে আদায়ের তারিখ এবং শতকরা বার্ষিক .... টাকা হারে সুদ সহিদ .... কে আদায় দেন।

অদ্য সন ২০১৬ ইং সালের ৬/১১ ইং তারিখে আমার স্বাক্ষর ও আদালতের মোহরযুক্ত মতে দেওয়া গেল।

স্বাঃ অপাঠ্য
১৩.১১.১৬
যুগ্ম জেলা জজ
২য় আদালত, কুমিল্লা।

১৪

মোকদ্দমার খরচঃ

বাদী	টাকা	পয়সা	প্রতিবাদী	টাকা	পয়সা
১) আরজির নিমিত্ত ষ্ট্যাম্প-	৭৫/- +৩০৪০ =৩১১৫	-	১) ওকালতনামার নিমিত্ত ষ্ট্যাম্প	১৮/-	-
২) ওকালতনামার নিমিত্ত ষ্ট্যাম্প-	৩৭/-	-	২) দরখাস্ত ও এফিডেভিটের নিমিত্তে ষ্ট্যাম্প-	৫০৯/-	-
৩) দরখাস্থ ও এফিডেভিটের নিমিত্ত ষ্ট্যাম্প-	৮৩৪/-	-	৩) উকিলের রসুম-	১০৭৩/-	-
৪) পরওয়ানা জারীর তলবানা	৪৭/-	-	৪) কমিশন ফি	-	-
৫) টাকার উপর উকিলের রসুম	১০৭৩/-	-	৫) ডেমি কাগজ	-	
৬) অন্যান্য খরচ	৩০০/-	-	৬) অন্যান্য	৩০০/-	
সর্বমোট	২৩৬৬+ ৩০৪০ =৫৪০৬	টাকা মাত্র	**সর্বমোট=**	**১৯০০/-**	টাকা মাত্র

দশ
টাকা
বাংলাদেশ
কোর্ট ফি